IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant:	Arthur Ernest Conrad, *et al.*	
Serial No.: 09/903,976	Conf. No.: 9444	Filing Date: July 12, 2001
Title of Application:	Web Attract Loop	
Group Art Unit: 3622	Examiner: Boveja, Namrata	

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Appeal Brief Under 37 CFR §41.37

Dear Sir:

A Notice of Appeal from the final rejection of Claims 1-44, all pending claims of U.S. Patent Application No. 09/903,976, having been filed on August 19, 2009, Appellant hereby files its Appeal Brief. A Claims Appendix is submitted herewith, as are Appendices related to evidence previously submitted and decisions related to the case.

(i) Real Party In Interest

The real party in interest is Netkey, Inc.; 100 South Shore Drive; East Haven,

Connecticut 06512.

(ii) Related Appeals and Interferences

An appeal had been previously filed in connection with this application, which

appeal was assigned Appeal No. 2008-0602. A Decision was rendered by the Board of

Patent Appeals and Interferences on February 29, 2008. A copy of this Decision is

attached hereto.

(iii) Status Of Claims

Claims 1-44 stand rejected and are the subject of the instant Appeal. A copy of

each of these claims is attached hereto in the Claims Appendix.

(iv) Status Of Amendments

No amendments have been filed since the most recent Office Action was mailed on

March 19, 2009.

(v) Summary Of Claimed Subject Matter

Claims 1, 11, 21, 22, 23, 33, 43 and 44 are the independent claims.

Independent Claim 1

Claim 1 is directed to a system 10 for displaying web content on a display of a user computer 14, which system 10 includes a central computer 12 and software executing on the central computer 12 for receiving a request 18 to transmit a web page 24. *See, e.g.,* Spec. ¶¶ 0019-0022 and Figs. 1 and 2. System 10 also includes software executing on the central computer 12 for transmitting a web page 24 to the user computer 14 in response to the request 18 to transmit a web page 24, the web page 24 including attract loop code 26. *See, e.g.,* Spec. ¶ 0022 and Figs. 1 and 2. The attract loop code 26 monitors the user computer 14 for a user event, and only if the user event does not occur within a specified time period, the attract loop code 26 automatically transmits a request 36 for attract loop content 38 to the central computer 12. *See, e.g.,* Spec. ¶¶ 0023-0024 and Figs. 1 and 2. System 10 also includes software executing on the central computer 12 for automatically transmitting attract loop content 38 to the user computer 14 in response to the request 36 for attract loop content 38. *See, e.g.,* Spec. ¶ 0024 and Figs. 1 and 2. The attract loop code 26 causes the attract loop content 38 to be displayed on the display of the user computer 14. *See, e.g.,* Spec. ¶ 0024 and Figs. 1 and 2.

Independent Claim 11

Claim 11 is directed to a system 10 for displaying web content on a display of a user computer 14, which system 10 includes a central computer 12 and software

executing on the central computer 12 for receiving, from a browser 16 executing on the user computer 14, a request 18 to transmit a web page 24. *See, e.g.,* Spec. ¶¶ 0019-0022 and Figs. 1 and 2. System 10 also includes software executing on the central computer 12 for transmitting a web page 24 to the browser 16 executing on the user computer 14 in response to the request 18 to transmit a web page 24, the web page 24 including attract loop code 26. *See, e.g.,* Spec. ¶ 0022 and Figs. 1 and 2. The attract loop code 26 monitors the user computer 14 for a user event, and only if the user event does not occur within a specified time period, the attract loop code 26 automatically causes the browser 16 executing on the user computer 14 to transmit a request 36 for attract loop content 38 to the central computer 12. *See, e.g.,* Spec. ¶¶ 0023-0024 and Figs. 1 and 2. System 10 also includes software executing on the central computer 12 for automatically transmitting attract loop content 38 to the browser 16 executing on the user computer 14 in response to the request 36 for attract loop content 38. *See, e.g.,* Spec. ¶ 0024 and Figs. 1 and 2. The attract loop code 26 causes the attract loop content 38 to be displayed on the display of the user computer 14 through the browser 16. *See, e.g.,* Spec. ¶ 0024 and Figs. 1 and 2.

Independent Claim 21

Claim 21 is directed to a system 10 for implementing an attract loop, which system 10 includes a central computer 12 and a user computer 14 in communication with the central computer 12 through a communications link, the user computer 14

having a browser 16 executing thereon and having a display. *See, e.g.,* Spec. ¶¶ 0019-

0021 and Fig. 1. The system 10 includes software executing on the central computer

12 for receiving, from the browser 16 executing on the user computer 14, a request 18

to transmit a web page 24. *See, e.g.,* Spec. ¶ 0022 and Figs. 1 and 2. System 10 also

includes software executing on the central computer 12 for transmitting a web page 24

to the browser 16 executing on the user computer 14 in response to the request 18 to

transmit a web page 24, the web page 24 including attract loop code 26. *See, e.g.,*

Spec. ¶ 0022 and Figs. 1 and 2. The attract loop code 26 monitors the user computer

14 for a user event, and only if the user event does not occur within a specified time

period, the attract loop code 26 automatically causes the browser 16 executing on the

user computer 14 to transmit a request 36 for attract loop content 38 to the central

computer 12. *See, e.g.,* Spec. ¶¶ 0023-0024 and Figs. 1 and 2. System 10 also

includes software executing on the central computer 12 for automatically transmitting

attract loop content 38 to the browser 16 executing on the user computer 14 in

response to the request 36 for attract loop content 38. *See, e.g.,* Spec. ¶ 0024 and

Figs. 1 and 2. The attract loop code 26 causes the attract loop content 38 to be

displayed on the display of the user computer 14 through the browser 16. *See, e.g.,*

Spec. ¶ 0024 and Figs. 1 and 2.

Independent Claim 22

Claim 22 is directed to a system 10 for displaying web content on a display of a user computer 14, which system 10 includes a central computer 12 and software executing on the central computer 12 for receiving a request 18 to transmit a web page 24. *See, e.g.,* Spec. ¶¶ 0019-0022 and Figs. 1 and 2. System 10 also includes software executing on the central computer 12 for transmitting a web page 24 to the user computer 14 in response to the request 18 to transmit a web page 24, the web page 24 including attract loop code 26 and attract loop content 38. *See, e.g.,* Spec. ¶¶ 0022, 0024 and Figs. 1 and 2. The attract loop code 26 monitors the user computer 14 for a user event, and only if the user event does not occur within a specified time period, the attract loop code 26 causes the attract loop content 38 to be displayed on the display of the user computer 14. *See, e.g.,* Spec. ¶¶ 0023-0024 and Figs. 1 and 2.

Independent Claim 23

Claim 23 is directed to a method for displaying web content on a display of a user computer 14, which method 10 includes the steps of providing a central computer 12, receiving a request 18 to transmit a web page 24 (step 20), and transmitting a web page 24 to the user computer 14 in response to the request 18 to transmit a web page 24 (step 22), the web page 24 including attract loop code 26. *See, e.g.,* Spec. ¶¶ 0019-0022 and Figs. 1 and 2. The attract loop code 26 monitors the user computer 14 for a user event, and only if the user event does not occur within a specified time period, the

attract loop code 26 automatically transmits a request 36 for attract loop content 38 to

the central computer 12 (steps 28, 30, 32, 34). *See, e.g.,* Spec. ¶¶ 0023-0024 and

Figs. 1 and 2. The method also includes the step of automatically transmitting attract

loop content 38 to the user computer 14 in response to the request 36 for attract loop

content 38. *See, e.g.,* Spec. ¶ 0024 and Figs. 1 and 2. The attract loop code 26

causes the attract loop content 38 to be displayed on the display of the user computer

14 (step 40). *See, e.g.,* Spec. ¶ 0024 and Figs. 1 and 2.

Independent Claim 33

Claim 33 is directed to a method for displaying web content on a display of a user

computer 14, which method includes the steps of providing a central computer 12,

receiving, from a browser 16 executing on the user computer 14, a request 18 to

transmit a web page 24 (step 20), and transmitting a web page 24 to the browser 16

executing on the user computer 14 in response to the request 18 to transmit a web

page 24 (step 22), the web page 24 including attract loop code 26. *See, e.g.,* Spec. ¶¶

0019-0022 and Figs. 1 and 2. The attract loop code 26 monitors the user computer 14

for a user event, and only if the user event does not occur within a specified time period,

the attract loop code 26 automatically causes the browser 16 executing on the user

computer 14 to transmit a request 36 for attract loop content 38 to the central computer

12 (steps 28, 30, 32, 34). *See, e.g.,* Spec. ¶¶ 0023-0024 and Figs. 1 and 2. The

method also includes the step of automatically transmitting attract loop content 38 to the

browser 16 executing on the user computer 14 in response to the request 36 for attract

loop content 38. *See, e.g.,* Spec. ¶ 0024 and Figs. 1 and 2. The attract loop code 26

causes the attract loop content 38 to be displayed on the display of the user computer

14 through the browser 16 (step 40). *See, e.g.,* Spec. ¶ 0024 and Figs. 1 and 2.

Independent Claim 43

Claim 43 is directed to a method for implementing an attract loop, which method

includes the steps of providing a central computer 12, providing a user computer 14 in

communication with the central computer 12 through a communications link, the user

computer 14 having a browser 16 executing thereon and having a display, receiving,

from the browser 16 executing on the user computer 14, a request 18 to transmit a web

page 24 (step 20), and transmitting a web page 24 to the browser 16 executing on the

user computer 14 in response to the request 18 to transmit a web page 24 (step 22), the

web page 24 including attract loop code 26. *See, e.g.,* Spec. ¶¶ 0019-0022 and Figs. 1

and 2. The attract loop code 26 monitors the user computer 14 for a user event, and

only if the user event does not occur within a specified time period, the attract loop code

26 automatically causes the browser 16 executing on the user computer 14 to transmit

a request 36 for attract loop content 38 to the central computer 12 (steps 28, 30, 32,

34). *See, e.g.,* Spec. ¶¶ 0023-0024 and Figs. 1 and 2. The method also includes the

step of automatically transmitting attract loop content 38 to the browser 16 executing on

the user computer 14 in response to the request 36 for attract loop content 38. *See,*

e.g., Spec. ¶ 0024 and Figs. 1 and 2. The attract loop code 26 causes the attract loop content 38 to be displayed on the display of the user computer 14 through the browser 16 (step 40). *See, e.g.,* Spec. ¶ 0024 and Figs. 1 and 2.

Independent Claim 44

Claim 44 is directed to a method for displaying web content on a display of a user computer 14, which method includes the steps of receiving a request 18 to transmit a web page 24 (step 20), and transmitting a web page 24 to the user computer 14 in response to the request 18 to transmit a web page 24 (step 22), the web page 24 including attract loop code 26 and attract loop content 38. *See, e.g.,* Spec. ¶¶ 0019-0022, 0024 and Figs. 1 and 2. The attract loop code 26 monitors the user computer 14 for a user event, and only if the user event does not occur within a specified time period, the attract loop code 26 causes the attract loop content 38 to be displayed on the display of the user computer 14 (steps 28, 30, 32, 34). *See, e.g.,* Spec. ¶¶ 0023-0024 and Figs. 1 and 2.

(vi) Grounds Of Rejection To Be Reviewed On Appeal

Claims 1-44 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

Claims 1, 2, 4, 6, 8-12, 14, 16, 18-24, 26, 28, 30-34, 36, 38 and 40-44 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gerszberg et al. (U.S. Patent No. 6,084,583) in view of Cho et al. (U.S. Patent No. 6,834,048).

Claims 3, 5, 13, 15, 25, 27, 35 and 37 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gerszberg et al. in view of Cho et al. and further in view of Park et al. (U.S. Patent No. 6,295,061).

Claims 7, 17, 29 and 39 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gerszberg et al. in view of Cho et al. and further in view of the article titled "An Internet newcomer is making money by selling moving ads as part of screen savers" written by David Barboza for the New York Times on October 1, 1996 on page D.7 (hereinafter "Barboza").

Claims 1, 2, 4, 6, 8-12, 14, 16, 18-24, 26, 28, 30-34, 36, 38 and 40-44 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gerszberg et al. in view of the

article titled "Tiny pager gives big picture; Innovation," written by Max Glaskin in The Times

on September 24, 1995 on page 1 (hereinafter "Glaskin").

Claims 3, 5, 13, 15, 25, 27, 35 and 37 stand rejected under 35 U.S.C. 103(a) as

being unpatentable over Gerszberg et al. in view of Glaskin and further in view of Park   et

al.

Claims 7, 17, 29 and 39 stand rejected under 35 U.S.C. 103(a) as being

unpatentable over Gerszberg et al. in view of Glaskin and further in view of Barboza.

(vii) Argument

The present invention is directed to a web attract loop (i.e., a screensaver) which

automatically displays web content after detection of an idle period of predetermined

duration, which can be downloaded without user intervention, which does not require

user installation on a user computer, and which includes media which can be modified

by a third party without user intervention. In this regard, all claims as amended require,

among other limitations, attract loop code transmitted along with a web page from a

central computer to a browser on a user computer, which attract loop code monitors the

user computer for a user event, and then requests and/or displays attract loop content

only if the monitored user event ***does not occur*** within a specified time period.

Applicant respectfully submits that at least the above-highlighted elements are not disclosed, taught or suggested in any way by the cited prior art, either when considered alone or when properly combined.

Rejection of Claims 1-44 Under 35 U.S.C. 112, First Paragraph

Claims 1-44 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner has stated that:

> The claim(s) contain subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the limitation "only if," constitutes new matter, as this claim limitation is not supported by the specification.

In support of this contention, the Examiner has noted that "In fact, a keyword search of the specification demonstrated that there is no mention of the word only on the Applicant's specification."

Thus, it appears to Appellant that the Examiner is objecting to the word "only" because that particular word does not appear in the specification as originally filed. However, Appellant respectfully submits that there is no requirement that all claim words have been previously present in an application as originally filed. Rather, claim terminology is not considered new matter when the specification supports the claim words, either

expressly, implicitly or inherently. MPEP §2163(I)(b) ("While there is no *in haec verba* requirement, newly added claim limitations must be supported in the specification through express, implicit, or inherent disclosure."). Thus, the appropriate test is whether a person of ordinary skill would have understood, at the time the patent application was filed, that the description supports the limitation. *Hyatt v. Boone*, 146 F.3d 1348, 1353, 47 USPQ2d 1128, 1131 (Fed. Cir. 1998).

Appellant respectfully submits that the Examiner has utterly failed to show why one skilled in the art would not have understood the claim limitation "only if" to not be supported, and in fact, cannot do so. The specification, as originally filed, goes into detail explaining how a timer is started when no user activity is detected, that the timer is reset when the user is active, and that the web content is displayed when the counter expires. Thus, while the specific word "only" may not be used, Appellant respectfully submits that the concept would be clear to one skilled in the art. The concept be equally clear from Appellant's repeated use of the term "screen saver," which one skilled in the art would clearly understand to support the "only if" terminology. The Examiner ignores the fact that the concept of "only if" is both implicit and inherent in the disclosure, and would clearly be understood to be so by one skilled in the art, in favor of a "keyword search" for the specific term "only if." Appellant respectfully submits that such is improper, and that the Examiner has not even alleged a proper rejection under 35 U.S.C. 112, first paragraph.

Rejection of Claims 1, 2, 4, 6, 8-12, 14, 16, 18-24, 26, 28,
30-34, 36, 38 and 40-44 Over Gerszberg et al. In View of Cho et al.

With respect to this rejection, it should be noted that the present application was

filed on July 12, 2001, but that the benefit of U.S. Provisional Patent Application No.

60/217,800, filed July 12, 2000 is claimed. Cho et al. issued on December 21, 2004,

and was filed on September 22, 2000, with no earlier benefit being claimed. Thus,

assuming that the claims of the present application are supported by the disclosure of

U.S. Provisional Patent Application No. 60/217,800, Cho et al. is not prior art to the

present application based on date.

In this regard, Applicant believes that Claim 1 is representative of all independent

claims. As such, Applicant below maps support in U.S. Provisional Patent Application

No. 60/217,800 for all elements of Claim 1:

> 1. A system for displaying a web content on a display of a user computer, said system comprising: **(Summary of the Invention, lines 1-2; Claim 1, lines 3-4; Claim 3)**
> > a central computer; **(Claim 1, line 2; Claim 2)**
> > software executing on said central computer for receiving a request to transmit a web page; **(Claim 1, line 2; Claim 2; Claim 3)**
> > software executing on said central computer for transmitting a web page to the user computer in response to the request to transmit a web page, the web page comprising attract loop code, wherein the attract loop code monitors the user computer for a user event, and only if the user event does not occur within a specified time period, the attract loop code automatically transmits a request for attract loop content to said central computer; **(Summary of the Invention, lines 2-4; Claim 1, lines 2-5; Claim 2; Claim 3)**
> > software executing on said central computer for automatically transmitting attract loop content to the user computer in response to the request for attract loop content; and **(Summary of the Invention, lines 2-4)**

wherein the attract loop code causes the attract loop content to be displayed on the display of the user computer. **(Summary of the Invention, lines 2-4; Claim 4; Claim 5)**

In view of the above, Applicant respectfully submits that the invention of Claim 1 is fully supported by U.S. Provisional Patent Application No. 60/217,800, which pre-dates the filing of Cho et al. As such, Cho et al. is not a properly cited reference.

The Examiner disagrees, stating that in the Summary of the Invention section of the Provisional Application, Applicant recites the detection of an "idle" period of predetermined duration and automatic display of a web attract loop upon such detection. The Examiner then goes on to assert that although one dictionary definition of "idle" is inactive, another definition of the word per www.dictionary.com is slow. Thus, the Examiner concludes, Claim 1, which requires inactivity, is not supported by the Provisional Application.

Applicant respectfully disagrees for at least two reasons.

First, while the Summary of the Invention section of the Provisional Application does indeed disclose detection of an "idle" period, Claim 1 of the Provisional Application (which <u>also</u> forms part of the Specification thereof) specifically discloses that what is being monitored is a period of "no activity". Thus, even if the portion of the Provisional

Application cited by the Examiner does not support Claim 1 of the present application (a conclusion with which Applicant disagrees for the reasons set forth below), the limitation in question of Claim 1 of the present application is explicitly supported just several lines below.

Second, Applicant respectfully disagrees with the Examiner's assertion that one skilled in the art would interpret the term "idle period" in the Provisional Application to mean anything other than a period of inactivity. While Applicant acknowledges that one of the definitions for the word "idle" found on www.dictionary.com is "[t]o run at a slow speed or out of gear" (indeed, this is the only definition Applicant could find having to do with something idle being "slow"), this definition *specifically has to do with motors and motor vehicles* ("Used of a motor vehicle"). As the present application has nothing to do with motors or motor vehicles, Applicant respectfully submits that one skilled in the art would clearly not impart this "slow" definition to the term "idle period" found in the Provisional Patent Application. Rather, one skilled in the art would clearly understand the term "idle period" to mean a period of inactivity, particularly since Claim 1 of the Provisional Patent Application explicitly used the terms "if there is no activity" and "that there is no activity." The Examiner completely ignores the fact that the cited definition of "idle" explicitly refers to *motors*, such used when an engine runs at idle.

In view of the above, Applicant respectfully submits that the invention of Claim 1

is fully supported by U.S. Provisional Patent Application No. 60/217,800, which pre-

dates the filing of Cho et al., and consequently that Cho et al. is not a properly cited

reference. Thus, Applicant respectfully submits that all rejections based on the

combination Gerszberg et al. and Cho et al. should be withdrawn.

Rejection of Claims 3, 5, 13, 15, 25, 27, 35 and 37 Over
Gerszberg et al. In View of Cho et al. and Further In View of Park et al.

Appellant respectfully submits that Cho et al. is not a properly cited reference for the

reasons discussed above, and that this rejection must fall for at least that reason.

Rejection of Claims 7, 17, 29 and 39 Over
Gerszberg et al. In View of Cho et al. and Further In View of Barboza

Appellant respectfully submits that Cho et al. is not a properly cited reference for the

reasons discussed above, and that this rejection must fall for at least that reason.

Rejection of Claims 1, 2, 4, 6, 8-12, 14, 16, 18-24, 26, 28,
30-34, 36, 38 and 40-44 Over Gerszberg et al. In View of Glaskin

With respect to the rejections based on a combination of Gerszberg et al. and

Glaskin, Appellant respectfully traverses these rejections on the basis that Glaskin is not

even close to being enabled for the premises it is cited as teaching. More specifically,

the Examiner cites Glaskin as disclosing "transmission of a web page to a

communications message device including a videophone, since it teaches browsing

World Wide Web pages from the Internet." However, Applicant respectfully points out

that the article, which itself states that it comprises 419 words, is a concept piece

reporting on a device "being secretly developed by Motorola."

The extremely brief article focuses on a unique graphical display, and only

mentions in passing the subject matter cited by the Examiner. In fact, the entirety of the

pertinent "teaching" is the following statement:

> When the new high-tech pager goes on sale in two years' time, it will usher in a
> new generation of messaging devices that can handle pictures, faxes, e-mail and
> even browse World Wide Web pages from the Internet.

> The tiny "image pager" could even allow mobile videophones to become as
> common as mobile phones are today, according to Motorola.

In this regard, Appellant notes that in order for subject matter disclosed in the

prior art to be citable, it must provide an enabling disclosure of the desired subject

matter, and that mere naming or description of the subject matter is insufficient, if it

cannot be produced without undue experimentation. *Elan Pharm., Inc. v. Mayo Found.*

For Med. Educ. & Research, 346 F.3d 1051, 1054, 68 USPQ2d 1373, 1376 (Fed. Cir.

2003).

Appellant cannot possibly conceive of how the incredibly brief mention, in passing,

of a device that may "even browse World Wide Web pages from the Internet" and that may

be considered a "viodephone" could be considered enabling. This is particularly true when

the article itself is essentially reporting a rumor about a device "being secretly developed."

Rejection of Claims 3, 5, 13, 15, 25, 27, 35 and 37 Over
Gerszberg et al. In View of Glaskin and Further In View of Park et al.

Appellant respectfully submits that Glaskin is not enabled for the premises it is cited

as teaching, and that this rejection must fall for at least that reason.

Rejection of Claims 7, 17, 29 and 39 Over
Gerszberg et al. In View of Glaskin and Further In View of Barboza

Appellant respectfully submits that Glaskin is not enabled for the premises it is cited

as teaching, and that this rejection must fall for at least that reason.

Conclusion

For the foregoing reasons, Applicant respectfully submits that the claimed

invention embodied in each of claims 1-44 is patentable over the cited prior art. As

such, Applicant respectfully requests that the rejections of each of claims 1-44 be

reversed and the Examiner be directed to issue a Notice of Allowance allowing each of

claims 1-44.

Respectfully submitted,

October 8, 2009   /Todd M. Oberdick/
                                   Gene S. Winter, Registration No. 28,352
                                   Todd M. Oberdick, Registration No. 44,268
                                   Attorneys for Applicant
                                   ST.ONGE STEWARD JOHNSTON & REENS LLC
                                   986 Bedford Street
                                   Stamford, CT 06905-5619
                                   203 324-6155

                                   Attorneys for Applicant-Appellant

**Claims Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 11/047,000**

1.   A system for displaying a web content on a display of a user computer, said system comprising:

a central computer;

software executing on said central computer for receiving a request to transmit a web page;

software executing on said central computer for transmitting a web page to the user computer in response to the request to transmit a web page, the web page comprising attract loop code, wherein the attract loop code monitors the user computer for a user event, and only if the user event does not occur within a specified time period, the attract loop code automatically transmits a request for attract loop content to said central computer;

software executing on said central computer for automatically transmitting attract loop content to the user computer in response to the request for attract loop content; and

wherein the attract loop code causes the attract loop content to be displayed on the display of the user computer.

2.   The system of Claim 1 wherein the attract loop code, while the attract loop content is being displayed on the display of the user computer, monitors the user computer for a user event, and, upon the occurrence of the user event, automatically causes the display of the attract loop content to be terminated.

3.   The system of Claim 1 wherein said central computer comprises a web server.

4.   The system of Claim 1 wherein the attract loop content is displayed in a browser window.

5.   The system of Claim 4 wherein the attract loop content is displayed in a browser window in full screen mode.

6.   The system of Claim 4 wherein the attract loop content is displayed in a browser window which was automatically opened by the attract loop code.

7.   The system of Claim 1 wherein the attract loop code automatically causes the attract loop content to be continually updated.

8.   The system of Claim 1 wherein the user event is selected from the group consisting of manipulation of an input device, movement of a mouse, typing on a keyboard, access of a storage device, and combinations of these.

9.   The system of Claim 1 wherein the attract loop content comprises media selected from the group consisting of text, graphics, animation, sound, video, multimedia, and combinations of these.

10.   The system of Claim 1 wherein the attract loop content relates to subject matter selected from the group consisting of advertisement, entertainment, education, and combinations of these.

11.   A system for displaying web content on a display of a user computer, said system comprising:

a central computer;

software executing on said central computer for receiving, from a browser executing on the user computer, a request to transmit a web page;

software executing on said central computer for transmitting a web page to the browser executing on the user computer in response to the request to transmit a web page, the web page comprising attract loop code, wherein the attract loop code monitors the user computer for a user event, and only if the user event does not occur

within a specified time period, the attract loop code causes the browser executing on

the user computer to transmit a request for attract loop content to said central computer;

software executing on said central computer for transmitting attract loop content

to the browser executing on the user computer in response to the request for attract

loop content; and

wherein the attract loop code causes the attract loop content to be displayed on

the display of the user computer through the browser.

12.   The system of Claim 11 wherein the attract loop code, while the attract

loop content is being displayed on the display of the user computer, monitors the user

computer for a user event, and, upon the occurrence of the user event, automatically

causes the display of the attract loop content to be terminated.

13.   The system of Claim 11 wherein said central computer comprises a web

server.

14.   The system of Claim 11 wherein the attract loop content is displayed in a

browser window.

15.   The system of Claim 14 wherein the attract loop content is displayed in a

browser window in full screen mode.

16.   The system of Claim 14 wherein the attract loop content is displayed in a browser window which was automatically opened by the attract loop code.

17.   The system of Claim 11 wherein the attract loop code automatically causes the attract loop content to be continually updated.

18.   The system of Claim 11 wherein the user event is selected from the group consisting of manipulation of an input device, movement of a mouse, typing on a keyboard, access of a storage device, and combinations of these.

19.   The system of Claim 11 wherein the attract loop content comprises media selected from the group consisting of text, graphics, animation, sound, video, multimedia, and combinations of these.

20.   The system of Claim 11 wherein the attract loop content relates to subject matter selected from the group consisting of advertisement, entertainment, education, and combinations of these.

21.   A system for implementing an attract loop, said system comprising:

a central computer;

a user computer in communication with said central computer through a

communications link, said user computer having a browser executing thereon and

having a display;

software executing on said central computer for receiving, from the browser

executing on said user computer, a request to transmit a web page;

software executing on said central computer for transmitting a web page to the

browser executing on said user computer in response to the request to transmit a web

page, the web page comprising attract loop code, wherein the attract loop code

monitors said user computer for a user event, and only if the user event does not occur

within a specified time period, the attract loop code causes the browser executing on

said user computer to transmit a request for attract loop content to said central

computer;

software executing on said central computer for transmitting attract loop content

to the browser executing on said user computer in response to the request for attract

loop content; and

wherein the attract loop code causes the attract loop content to be displayed on

the display of said user computer through the browser.

22.   A system for displaying web content on a display of a user computer, said

system comprising:

a central computer;

software executing on said central computer for receiving a request to transmit a web page; and

software executing on said central computer for transmitting a web page to the user computer in response to the request to transmit a web page, the web page comprising attract loop code and attract loop content, wherein the attract loop code monitors the user computer for a user event, and only if the user event does not occur within a specified time period, the attract loop code automatically causes the attract loop content to be displayed on the display of the user computer.

23.   A method for displaying web content on a display of a user computer, said method comprising the steps of:

providing a central computer;

receiving a request to transmit a web page;

transmitting a web page to the user computer in response to the request to transmit a web page, the web page comprising attract loop code, wherein the attract loop code monitors the user computer for a user event, and only if the user event does not occur within a specified time period, the attract loop code automatically transmits a request for attract loop content to the central computer;

automatically transmitting attract loop content to the user computer in response to the request for attract loop content; and

wherein the attract loop code causes the attract loop content to be displayed on the display of the user computer.

24.   The method of Claim 23 wherein the attract loop code, while the attract loop content is being displayed on the display of the user computer, monitors the user computer for a user event, and, upon the occurrence of the user event, automatically causes the display of the attract loop content to be terminated.

25.   The method of Claim 23 wherein the central computer comprises a web server.

26.   The method of Claim 23 wherein the attract loop content is displayed in a browser window.

27.   The method of Claim 26 wherein the attract loop content is displayed in a browser window in full screen mode.

28.   The method of Claim 26 wherein the attract loop content is displayed in a browser window which was automatically opened by the attract loop code.

29.   The method of Claim 23 wherein the attract loop code automatically causes the attract loop content to be continually updated.

30.   The method of Claim 23 wherein the user event is selected from the group consisting of manipulation of an input device, movement of a mouse, typing on a keyboard, access of a storage device, and combinations of these.

31.   The system of Claim 23 wherein the attract loop content comprises media selected from the group consisting of text, graphics, animation, sound, video, multimedia, and combinations of these.

32.   The method of Claim 23 wherein the attract loop content relates to subject matter selected from the group consisting of advertisement, entertainment, education, and combinations of these.

33.   A method for displaying web content on a display of a user computer, said method comprising the steps of:

providing a central computer;

receiving, from a browser executing on the user computer, a request to transmit a web page;

transmitting a web page to the browser executing on the user computer in

response to the request to transmit a web page, the web page comprising attract loop

code, wherein the attract loop code monitors the user computer for a user event, and

only if the user event does not occur within a specified time period, the attract loop code

causes the browser executing on the user computer to transmit a request for attract

loop content to the central computer;

transmitting attract loop content to the browser executing on the user computer in

response to the request for attract loop content; and

wherein the attract loop code causes the attract loop content to be displayed on

the display of the user computer through the browser.

34.   The method of Claim 33 wherein the attract loop code, while the attract

loop content is being displayed on the display of the user computer, monitors the user

computer for a user event, and, upon the occurrence of the user event, automatically

causes the display of the attract loop content to be terminated.

35.   The method of Claim 33 wherein the central computer comprises a web

server.

36.   The method of Claim 33 wherein the attract loop content is displayed in a

browser window.

37.   The method of Claim 36 wherein the attract loop content is displayed in a browser window in full screen mode.

38.   The method of Claim 36 wherein the attract loop content is displayed in a browser window which was automatically opened by the attract loop code.

39.   The method of Claim 33 wherein the attract loop code automatically causes the attract loop content to be continually updated.

40.   The method of Claim 33 wherein the user event is selected from the group consisting of manipulation of an input device, movement of a mouse, typing on a keyboard, access of a storage device, and combinations of these.

41.   The method of Claim 33 wherein the attract loop content comprises media selected from the group consisting of text, graphics, animation, sound, video, multimedia, and combinations of these.

42.   The method of Claim 33 wherein the attract loop content relates to subject matter selected from the group consisting of advertisement, entertainment, education, and combinations of these.

43.   A method for implementing an attract loop, said method comprising the steps of:

providing a central computer;

providing a user computer in communication with said central computer through a communications link, the user computer having a browser executing thereon and having a display;

receiving, from the browser executing on the user computer, a request to transmit a web page;

transmitting a web page to the browser executing on the user computer in response to the request to transmit a web page, the web page comprising attract loop code, wherein the attract loop code monitors said user computer for a user event, and only if the user event does not occur within a specified time period, the attract loop code causes the browser executing on the user computer to transmit a request for attract loop content to the central computer;

transmitting attract loop content to the browser executing on the user computer in response to the request for attract loop content; and

wherein the attract loop code causes the attract loop content to be displayed on the display of the user computer through the browser.

44.   A method for displaying web content on a display of a user computer, said

method comprising the steps of:

receiving a request to transmit a web page; and

transmitting a web page to the user computer in response to the request to

transmit a web page, the web page comprising attract loop code and attract loop

content, wherein the attract loop code monitors the user computer for a user event, and

only if the user event does not occur within a specified time period, the attract loop code

automatically causes the attract loop content to be displayed on the display of the user

computer.

**Evidence Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 09/903,976**

None.

**Related Proceedings Appendix
to Appeal Brief Under 37 CFR §41.37
Serial No. 09/903,976**

A copy of the Decision rendered by the Board of Patent Appeals and Interferences on February 29, 2008 in connection with Appeal No. 2008-0602 is attached.

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,976	07/12/2001	Arthur Ernest Conrad	01424-P0037B	9444

24126   7590   02/29/2008
ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD, CT 06905-5619

EXAMINER
BOVEJA, NAMRATA

ART UNIT	PAPER NUMBER
3622	

MAIL DATE	DELIVERY MODE
02/29/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

1   UNITED STATES PATENT AND TRADEMARK OFFICE

2   _____

3

4   BEFORE THE BOARD OF PATENT APPEALS

5   AND INTERFERENCES

6   _____

7

8   *Ex parte* ARTHUR ERNEST CONRAD, GREGORY J. DECKER, and

9   JOSEPH F. CELANO

10   _____

11

12   Appeal 2008-0602

13   Application 09/903,976

14   Technology Center 3600

15   _____

16

17   Decided: February 29, 2008

18   _____

19

20 Before HUBERT C. LORIN, ANTON W. FETTING, and

21 JOSEPH A. FISCHETTI, *Administrative Patent Judges.*

22 FETTING, *Administrative Patent Judge.*

23   DECISION ON APPEAL

24   STATEMENT OF CASE

25   Arthur Ernest Conrad, Gregory J. Decker, and Joseph F. Celano

26 (Appellants) seek review under 35 U.S.C. § 134 of a final rejection of claims

27 1-44, the only claims pending in the application on appeal.

1   We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)

2 (2002).

3   We REVERSE and ENTER A NEW GROUND UNDER 37 C.F.R. §

4 41.50(b).

5   The Appellants invented a system for displaying content, as directed

6 by a process referred to as a web attract loop, on a display of a user

7 computer. The system transmits a web page to a user computer in response

8 to a request. The web page includes the web attract loop code which

9 monitors the user computer for a user event, and if the user event does not

10 occur within a specified time period, the attract loop code automatically

11 transmits a request for attract loop content to the central computer. The

12 central computer automatically transmits attract loop content to the user

13 computer in response to the request, and the attract loop code causes the

14 attract loop content to be displayed on the display of the user computer

15 (Specification 4-5:¶ 0012).

16   An understanding of the invention can be derived from a reading of

17 exemplary claim 44, which is reproduced below (bracketed matter and some

18 paragraphing added).

19   44. A method for displaying web content on a display of a user
20   computer, said method comprising the steps of:

21   [1] receiving a request to transmit a web page; and

22   [2] transmitting a web page to the user computer in response to
23   the request to transmit a web page,

24   the web page comprising attract loop code and attract
25   loop content,

26   wherein the attract loop code monitors the user computer
27   for a user event, and

1   only if the user event does not occur within a specified

2   time period,

3   the attract loop code automatically causes the

4   attract loop content to be displayed on the display

5   of the user computer.

6

7   This appeal arises from the Examiner's Final Rejection, mailed July

8   12, 2006. The Appellants filed an Appeal Brief in support of the appeal on

9   December 14, 2006. An Examiner's Answer to the Appeal Brief was mailed

10   on April 5, 2007. A Reply Brief was filed on June 5, 2007.

11   PRIOR ART

12   The Examiner relies upon the following prior art:

13   Park   US 6,295,061 B1   Sep. 25, 2001

14   David Barboza, *An internet newcomer is making money by selling moving*

15   *ads as part of screen savers*, The New York Times, (Oct. 1, 1996), at D7.

16

17   We also discuss the following art in this Decision.

18   Gerszberg   US 6,084,583   Jul. 4, 2000

19   Cho   US 6,834,048 B1   Dec. 21, 2004

20   REJECTIONS

21   Claims 1-6, 8-16, 18-28, 30-38, and 40-44 stand rejected under 35

22   U.S.C. § 102(e) as anticipated by Park.

23   Claims 7, 17, 29, and 39 stand rejected under 35 U.S.C. § 103(a) as

24   unpatentable over Park and Barboza.

1   ISSUES

2   The issues pertinent to this appeal are

3   •   Whether the Appellants have sustained their burden of showing that

4   the Examiner erred in rejecting claims 1-6, 8-16, 18-28, 30-38, and

5   40-44 under 35 U.S.C. § 102(e) as anticipated by Park.

6   •   Whether the Appellants have sustained their burden of showing that

7   the Examiner erred in rejecting claims 7, 17, 29, and 39 under 35

8   U.S.C. § 103(a) as unpatentable over Park and Barboza.

9   The pertinent issue turns on whether Park describes code that

10   monitors for a user event, and only if the user event does not occur within a

11   specified time period, the code automatically causes certain content to be

12   displayed.

13   FACTS PERTINENT TO THE ISSUES

14   The following enumerated Findings of Fact (FF) are supported by a

15   preponderance of the evidence.

16   *Park*

17   01.   Park is directed to dynamically and interactively displaying

18   images near a pointer or cursor in response to the movement or

19   activity of a pointing device (Park 3:59-62).

20   02.   Park describes a lapse of time as among the set of standard

21   events its pointing device will consider to be a predefined activity

22   which may change the display of an advertisement (Park 9:58-65;

23   Fig. 9).

1   03.   Park does not describe any activity that would terminate a

2   standard activity, such as an elapsed period of time, other than the

3   occurrence of that event. Thus, if an elapse of time is a standard

4   event, whatever is to occur upon that event's occurrence occurs in

5   Park, irrespective of any other event.

6   *Barboza*

7   04.   Barboza describes the Pointcast news and information service

8   which it supplies with advertisements (Barboza 7-10) and delivers

9   through its channel viewer, which also acts as a screen saver

10   (Barboza 15-17).

11   *Facts Related To The Level Of Skill In The Art*

12   05.   Neither the Examiner nor the Appellants has addressed the level

13   of ordinary skill in the pertinent arts of tracking items and data

14   formatting. We will therefore consider the cited prior art as

15   representative of the level of ordinary skill in the art. *See Okajima*

16   *v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) ("[T]he

17   absence of specific findings on the level of skill in the art does not

18   give rise to reversible error 'where the prior art itself reflects an

19   appropriate level and a need for testimony is not shown'")

20   (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755

21   F.2d 158, 163 (Fed. Cir. 1985) (Fed. Cir. 1985).

22   *Facts Related To Secondary Considerations*

23   06.   There is no evidence on record of secondary considerations of

24   non-obviousness for our consideration.

1 PRINCIPLES OF LAW

2 *Claim Construction*

3   During examination of a patent application, pending claims are

4 given their broadest reasonable construction consistent with the

5 specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969); *In*

6 *re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

7   Limitations appearing in the specification but not recited in the claim

8 are not read into the claim. *E-Pass Techs., Inc. v. 3Com Corp.*, 343 F.3d

9 1364, 1369 (Fed. Cir. 2003) (claims must be interpreted "in view of the

10 specification" without importing limitations from the specification into the

11 claims unnecessarily).

12   Although a patent applicant is entitled to be his or her own

13 lexicographer of patent claim terms, in *ex parte* prosecution it must be

14 within limits. *In re Corr*, 347 F.2d 578, 580 (CCPA 1965). The applicant

15 must do so by placing such definitions in the specification with sufficient

16 clarity to provide a person of ordinary skill in the art with clear and precise

17 notice of the meaning that is to be construed. *See also In re Paulsen*, 30

18 F.3d 1475, 1480 (Fed. Cir. 1994) (although an inventor is free to define the

19 specific terms used to describe the invention, this must be done with

20 reasonable clarity, deliberateness, and precision; where an inventor chooses

21 to give terms uncommon meanings, the inventor must set out any

22 uncommon definition in some manner within the patent disclosure so as to

23 give one of ordinary skill in the art notice of the change).

24 *Anticipation*

1   "A claim is anticipated only if each and every element as set forth in

2   the claim is found, either expressly or inherently described, in a single prior

3   art reference." *Verdegaal Bros. v. Union Oil Co.*, 814 F.2d 628, 631 (Fed.

4   Cir. 1987). "When a claim covers several structures or compositions, either

5   generically or as alternatives, the claim is deemed anticipated if any of the

6   structures or compositions within the scope of the claim is known in the

7   prior art." *Brown v. 3M*, 265 F.3d 1349, 1351 (Fed. Cir. 2001). "The

8   identical invention must be shown in as complete detail as is contained in the

9   ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir.

10   1989). The elements must be arranged as required by the claim, but this is

11   not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In*

12   *re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990).

13   *Obviousness*
14   A claimed invention is unpatentable if the differences between it and

15   the prior art are "such that the subject matter as a whole would have been

16   obvious at the time the invention was made to a person having ordinary skill

17   in the art." 35 U.S.C. § 103(a) (2000); *KSR Int'l v. Teleflex Inc.*, 127 S.Ct.

18   1727, 1729-30 (2007); *Graham v. John Deere Co.*, 383 U.S. 1, 13-14

19   (1966).

20   In *Graham*, the Court held that that the obviousness analysis is

21   bottomed on several basic factual inquiries: "[(1)] the scope and content of

22   the prior art are to be determined; [(2)] differences between the prior art and

23   the claims at issue are to be ascertained; and [(3)] the level of ordinary skill

24   in the pertinent art resolved." 383 U.S. at 17. *See also KSR Int'l v. Teleflex*

25   *Inc.*, 127 S.Ct. at 1734. "The combination of familiar elements according to

1   known methods is likely to be obvious when it does no more than yield

2   predictable results." *KSR*, at 1739.

3   "When a work is available in one field of endeavor, design incentives

4   and other market forces can prompt variations of it, either in the same field

5   or in a different one. If a person of ordinary skill in the art can implement a

6   predictable variation, § 103 likely bars its patentability." *Id.* at 1740.

7   "For the same reason, if a technique has been used to improve one

8   device, and a person of ordinary skill in the art would recognize that it would

9   improve similar devices in the same way, using the technique is obvious

10   unless its actual application is beyond his or her skill." *Id.*

11   "Under the correct analysis, any need or problem known in the field

12   of endeavor at the time of invention and addressed by the patent can provide

13   a reason for combining the elements in the manner claimed." *Id.* at 1742.

14   ANALYSIS

15   *Claims 1-6, 8-16, 18-28, 30-38, and 40-44 rejected under 35 U.S.C. § 102(e)*

16   *as anticipated by Park.*

17   The Appellants argue these claims as a group.

18   Accordingly, we select claim 1 as representative of the group.

19   37 C.F.R. § 41.37(c)(1)(vii) (2007).

20   The Examiner found that Park anticipated claim 1 (Answer 3-4).

21   The Appellants contend that Park does not monitor for a user event,

22   and only if the user event does not occur within a specified time period, the

23   code automatically causes certain content to be displayed (Appeal Br. 11-

24   13). In particular, the Appellants argue that Park's elapsed time event is a

1   simple timer and is not reset by another event. As a result, the code that

2   automatically causes display is not monitoring user events and not executing

3   the display only if a user event does not occur within a specified time period

4   (Appeal Br. 13).

5   The Examiner responds that Park 9:62 – 10:6 describes a lapse of time

6   as an activity that can cause a display. The Examiner finds that Park is not

7   just a timer, but displays advertisements if non-movement of a mouse is

8   detected for a certain period of time (Answer 8). The Appellants respond in

9   turn that although Park may display an advertisement after an elapse in time,

10   this occurs purely upon such a time lapse and there is no further criteria of

11   non-movement of a pointer for such a display (Reply Br. 2-3).

12   We agree. While Park does describe displaying advertisements in

13   response to predefined activities (FF 01) and using time lapse as one of those

14   activities (FF 02), Park does not describe anything that would create the only

15   if condition required in claim 1 (FF 03). The portion cited by the Examiner

16   of Park states

17   Moreover, the pointing device activity further includes a
18   combination of standard events such as *a lapse of time*
19   *regardless of any user's pointing device activity.* Further
20   examples of such activities include an X trace with pointing
21   device 12 (FIG. 11), shaking pointing device 12 (FIG. 13), an O
22   trace made by pointing device 12 (see FIG. 10) or various
23   shapes of traces with the pointing device, lapse of certain time,
24   movement of cursor in a certain area within the working
25   window, a scroll of the working window, etc. Thus, the present
26   invention can be easily programed [sic] to recognize various
27   forms of activities for implementation. [Emphasis not in
28   original.]

1   (Park 9:62 – 10:6.) We find that the caveat to *a lapse of time* of *regardless*

2   *of any user's pointing device activity* implicitly negates the Examiner's

3   finding of non-movement of a mouse being part of this event. It may very

4   well occur that there will be no movement, but the claim requires that the

5   display occur only if, not simply if, there is no movement. It may also occur

6   that movement of a pointer would itself trigger a display, but the plain

7   reading of Park implies that the timer will still cause its display at the end of

8   the time lapse. Thus, the Examiner has erred in finding that Park describes

9   code that monitors for a user event, and only if the user event does not occur

10   within a specified time period, the code automatically causes certain content

11   to be displayed.

12   The Appellants have sustained their burden of showing that the

13   Examiner erred in rejecting claims 1-6, 8-16, 18-28, 30-38, and 40-44 under

14   35 U.S.C. § 102(e) as anticipated by Park.

15   *Claims 7, 17, 29, and 39 rejected under 35 U.S.C. § 103(a) as unpatentable*

16   *over Park and Barboza.*

17   These claims recite the same limitation of code that monitors for a

18   user event, and only if the user event does not occur within a specified time

19   period, the code automatically causes certain content to be displayed.

20   Although Barboza mentions a screen saver, Barboza provides no details, and

21   the Examiner has not shown that Barboza describes the limitation of code

22   that monitors for a user event, and only if the user event does not occur

23   within a specified time period, the code automatically causes certain content

24   to be displayed.

1   The Appellant has argued that these claims are patentable for the same

2   reasons as claim 1, and therefore has similarly sustained its burden of

3   showing that the Examiner erred in rejecting claims 7, 17, 29, and 39 under

4   35 U.S.C. § 103(a) as unpatentable over Park and Barboza.

5   CONCLUSIONS OF LAW

6   The Appellants have sustained their burden of showing that the

7   Examiner erred in rejecting claims 1-44 under 35 U.S.C. § 103(a) as

8   unpatentable over the prior art.

9   NEW GROUND OF REJECTION

10   The following new ground of rejection is entered pursuant to

11   37 C.F.R. § 41.50(b).

12   Independent claims 1, 11, 21, 22, 23, 33, 43, and 44 are rejected under

13   35 U.S.C. § 103(a) as unpatentable over Gerszberg and Cho.

14   ADDITIONAL FACTS PERTINENT TO THE ISSUES

15   The following additional enumerated Findings of Fact (FF) are

16   supported by a preponderance of the evidence.

17   *Gerszberg*

18   07.   Gerszberg is directed to the use of interactive commercials as a

19   screen saver. According to one embodiment, an advertisement is

20   periodically moved about the touch screen display after a

21   predetermined period of time after there is no input activity from

22   the device (Gerszberg 2:29-40).

1   08. Gerszberg's controller may connect to a personal computer

2   (Gerszberg 4:13-25).

3   09. Each of the devices connected to Gerszberg's device may be

4   connected to the internet and use TCP/IP, the internet

5   communication protocol (Gerszberg 5:28-40).

6   10. Gerszberg describes connecting to a central computer

7   (Gerszberg 6:36-48; Fig. 4A).

8   11. Gerszberg's central computer sends updated screen saver

9   content to the phone (Gerszberg 8:26-29).

10   12. Gerszberg describes the logic of its screen saver as monitoring

11   activity, and only when no activity has been detected for a

12   predetermined period of time, displaying a screen saver content

13   (Gerszberg 8:43-65; Fig. 6).

14   13. Gerszberg describes updating the screen saver content by

15   having the device having the display call for new content after the

16   existing content has been displayed for some period of time

17   (Gerszberg 9:8-11).

18   *Cho*

19   14. Cho is directed to initiating an internet telephone service from a

20   web page with Voice over internet protocol (VoIP) technology

21   (Cho 33-60).

22   ANALYSIS

23   All of the independent claims have substantially the same limitations.

24   We analyze how Gerszberg and Cho render claim 1 unpatentable. The

1   analysis of patentability for claim 1 is then applicable to the remaining

2   independent claims in this rejection. The facts of Gerszberg and Cho

3   describe claim 1 limitations as follows.

4   1. A system for displaying a web content on a display of a user
5   computer, said system comprising:

6   a central computer; [FF 10]

7   software executing on said central computer for receiving a
8   request to transmit a web page; [Gerszberg describes receiving
9   a request to transmit content to a phone (FF 13); Cho describes
10   using a web page for phone service and VOIP (FF 14)]

11   software executing on said central computer for transmitting a
12   web page to the user computer in response to the request to
13   transmit a web page, [FF 11]

14   the web page comprising attract loop code, wherein the attract
15   loop code monitors the user computer for a user event, and only
16   if the user event does not occur within a specified time period,
17   the attract loop code automatically transmits a request for
18   attract loop content to said central computer; [FF 12]

19   software executing on said central computer for automatically
20   transmitting attract loop content to the user computer in
21   response to the request for attract loop content; and [FF 12]

22   wherein the attract loop code causes the attract loop content to
23   be displayed on the display of the user computer [FF 12].

24   Basically, Gerszberg describes all of the limitations of claim 1, and in

25   particular, a screen saver, including the details of the programming logic that

26   both monitors for activity and displays content only if such activity is not

27   provided within a specific period of time [FF 12] and having the client call

28   for screen saver content from the server [FF 13], except for the transmission

29   of a web page. Gerszberg's transmission may be internet content, which

30   would suggest web content. Cho demonstrates that Gerszberg's videophone

31   may be a computer using VOIP with web pages. Thus, Gerszberg's

1 screensaver on Cho's VOIP videophone would use web pages for its

2 downloaded content to be compatible with Cho's web pages. It would have

3 been obvious to a person of ordinary skill in the art to have applied

4 Gerszberg's videophone within Cho's VOIP context because of Cho's taught

5 application to phone service.

6   The Examiner should consider the patentability of the dependent

7 claims under Gerszberg, Cho, and the remaining art of record.

8   DECISION

9   To summarize, our decision is as follows:

10 • The rejection of claims 1-6, 8-16, 18-28, 30-38, and 40-44 under 35

11   U.S.C. § 102(e) as anticipated by Park is not sustained.

12 • The rejection of claims 7, 17, 29, and 39 under 35 U.S.C. § 103(a) as

13   unpatentable over Park and Barboza is not sustained.

14 • The following new ground of rejection is entered pursuant to 37

15   C.F.R. § 41.50(b).

16   o Independent claims 1, 11, 21, 22, 23, 33, 43, and 44 are rejected

17   under 35 U.S.C. § 103(a) as unpatentable over Gerszberg and

18   Cho.

19   No time period for taking any subsequent action in connection with

20 this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv) (2007).

21   REVERSED; 37 C.F.R. § 41.50(b)

22

23
24

1   hh

2

3

4   ST. ONGE STEWARD JOHNSTON & REENS, LLC
5   986 BEDFORD STREET
6   STAMFORD, CT 06905-5619